



January 18, 2007

HOUSE BILL No. 1129

DIGEST OF HB 1129 (Updated January 17, 2007 8:38 am - DI 87)

Citations Affected: IC 5-14.

Synopsis: Prohibition of serial meetings. Provides that members of a governing body who participate in a series of gatherings either in person or by electronic means (excluding electronic mail) violate the open door law if: (1) at least two but less than a quorum of members attend each gathering; (2) the total sum of different members attending all gatherings equals at least a quorum of the governing body; (3) all the gatherings concern the same subject matter and are held within a period of not more than seven days; and (4) the gatherings are held for the purpose of taking official action on public business. Provides that the following do not constitute a meeting for purposes of the open door law: (1) A meeting between one member of the governing body and at least one other individual who is not a member of the governing body concerning public business; (2) a gathering to receive information about industrial or commercial prospects that does not include a discussion of the terms of a request or an offer of public financial resources; or (3) a gathering for the sole purpose of administering an oath of office to an individual. Provides that interviews with industrial or commercial prospects by the governing body of a political subdivision may be held in executive session.

Effective: July 1, 2007.

Stilwell, Bauer, Grubb

January 8, 2007, read first time and referred to Committee on Government and Regulatory Reform.
January 17, 2007, amended, reported — Do Pass.

HB 1129—LS 6642/DI 87+



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January 18, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1129

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. For the purposes of
3 this chapter:

4 (a) "Public agency" means the following:

5 (1) Any board, commission, department, agency, authority, or
6 other entity, by whatever name designated, exercising a portion of
7 the executive, administrative, or legislative power of the state.

8 (2) Any county, township, school corporation, city, town, political
9 subdivision, or other entity, by whatever name designated,
10 exercising in a limited geographical area the executive,
11 administrative, or legislative power of the state or a delegated
12 local governmental power.

13 (3) Any entity which is subject to either:

14 (A) budget review by either the department of local
15 government finance or the governing body of a county, city,
16 town, township, or school corporation; or

17 (B) audit by the state board of accounts.

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(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

(1) any social or chance gathering not intended to avoid this chapter;

(2) any on-site inspection of any project or program;

(3) traveling to and attending meetings of organizations devoted to betterment of government; or

(4) a caucus;

(5) a meeting between one (1) member of the governing body and at least one (1) other individual who is not a member of the governing body concerning public business;

(6) a gathering to receive information about an industrial or commercial prospect that does not include a discussion of the terms of a request or an offer of public financial resources; or

(7) a gathering for the sole purpose of administering an oath of office to an individual.

(d) "Official action" means to:

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- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

SECTION 2. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.1. (a) A governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets:**

(1) the definition of "meeting" under section 2 of this chapter; and

(2) all of the following criteria:

(A) Each gathering is attended by at least two (2) members but less than a quorum of the members of the governing body.

(B) The sum of the number of different members of the governing body attending any of the gatherings equals at least a quorum of the governing body.

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(C) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) days.

(D) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(b) A violation described in subsection (a) is subject to section 7 of this chapter.

SECTION 3. IC 5-14-1.5-6.1, AS AMENDED BY P.L.101-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.1. (a) As used in this section, "public official" means a person:

- (1) who is a member of a governing body of a public agency; or
- (2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

- (1) Where authorized by federal or state statute.
- (2) For discussion of strategy with respect to any of the following:
 - (A) Collective bargaining.
 - (B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.
 - (C) The implementation of security systems.
 - (D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the Indiana finance authority, or ~~economic development commissions~~ **a governing body of a political subdivision**.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

- (A) to receive information concerning the individual's alleged

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- 1 misconduct; and
- 2 (B) to discuss, before a determination, the individual's status
- 3 as an employee, a student, or an independent contractor who
- 4 is:
- 5 (i) a physician; or
- 6 (ii) a school bus driver.
- 7 (7) For discussion of records classified as confidential by state or
- 8 federal statute.
- 9 (8) To discuss before a placement decision an individual student's
- 10 abilities, past performance, behavior, and needs.
- 11 (9) To discuss a job performance evaluation of individual
- 12 employees. This subdivision does not apply to a discussion of the
- 13 salary, compensation, or benefits of employees during a budget
- 14 process.
- 15 (10) When considering the appointment of a public official, to do
- 16 the following:
- 17 (A) Develop a list of prospective appointees.
- 18 (B) Consider applications.
- 19 (C) Make one (1) initial exclusion of prospective appointees
- 20 from further consideration.
- 21 Notwithstanding IC 5-14-3-4(b)(12), a governing body may
- 22 release and shall make available for inspection and copying in
- 23 accordance with IC 5-14-3-3 identifying information concerning
- 24 prospective appointees not initially excluded from further
- 25 consideration. An initial exclusion of prospective appointees from
- 26 further consideration may not reduce the number of prospective
- 27 appointees to fewer than three (3) unless there are fewer than
- 28 three (3) prospective appointees. Interviews of prospective
- 29 appointees must be conducted at a meeting that is open to the
- 30 public.
- 31 (11) To train school board members with an outside consultant
- 32 about the performance of the role of the members as public
- 33 officials.
- 34 (12) To prepare or score examinations used in issuing licenses,
- 35 certificates, permits, or registrations under IC 15-5-1.1 or IC 25.
- 36 (13) To discuss information and intelligence intended to prevent,
- 37 mitigate, or respond to the threat of terrorism.
- 38 (c) A final action must be taken at a meeting open to the public.
- 39 (d) Public notice of executive sessions must state the subject matter
- 40 by specific reference to the enumerated instance or instances for which
- 41 executive sessions may be held under subsection (b). The requirements
- 42 stated in section 4 of this chapter for memoranda and minutes being

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made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

SECTION 4. IC 5-14-1.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) An action may be filed by any person in any court of competent jurisdiction to:

- (1) obtain a declaratory judgment;
- (2) enjoin continuing, threatened, or future violations of this chapter; or
- (3) declare void any policy, decision, or final action:
 - (A) taken at an executive session in violation of section 3(a) of this chapter;
 - (B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;
 - (C) that is based in whole or in part upon official action taken at any:
 - (i) executive session in violation of section 3(a) of this chapter; ~~or at any~~
 - (ii) meeting of which notice is not given in accordance with section 5 of this chapter; or
 - (iii) **series of gatherings in violation of section 3.1 of this chapter; or**
 - (D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

- (1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted,

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of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the public access counselor concerning the violation.

(e) If a court declares a policy, decision, or final action of a

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1 governing body of a public agency void, the court may enjoin the
2 governing body from subsequently acting upon the subject matter of
3 the voided act until it has been given substantial reconsideration at a
4 meeting or meetings that comply with this chapter.

5 (f) In any action filed under this section, a court shall award
6 reasonable attorney's fees, court costs, and other reasonable expenses
7 of litigation to the prevailing party if:

8 (1) the plaintiff prevails; or

9 (2) the defendant prevails and the court finds that the action is
10 frivolous and vexatious.

11 The plaintiff is not eligible for the awarding of attorney's fees, court
12 costs, and other reasonable expenses if the plaintiff filed the action
13 without first seeking and receiving an informal inquiry response or
14 advisory opinion from the public access counselor, unless the plaintiff
15 can show the filing of the action was necessary to prevent a violation
16 of this chapter.

17 (g) A court shall expedite the hearing of an action filed under this
18 section.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1129, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. For the purposes of this chapter:

(a) "Public agency" means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its

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presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

- (1) any social or chance gathering not intended to avoid this chapter;
- (2) any on-site inspection of any project or program;
- (3) traveling to and attending meetings of organizations devoted to betterment of government; or
- (4) a caucus;
- (5) a meeting between one (1) member of the governing body and at least one (1) other individual who is not a member of the governing body concerning public business;**
- (6) a gathering to receive information about an industrial or commercial prospect that does not include a discussion of the terms of a request or an offer of public financial resources; or**
- (7) a gathering for the sole purpose of administering an oath of office to an individual.**

(d) "Official action" means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3),

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(d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

SECTION 2. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.1. (a) A governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets:**

(1) the definition of "meeting" under section 2 of this chapter; and

(2) all of the following criteria:

(A) Each gathering is attended by at least two (2) members but less than a quorum of the members of the governing body.

(B) The sum of the number of different members of the governing body attending any of the gatherings equals at least a quorum of the governing body.

(C) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) days.

(D) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail."

Page 2, delete lines 1 through 16.

Page 2, line 17, delete "(c)" and insert "(b)".

Page 2, between lines 18 and 19, begin a new paragraph and insert: "SECTION 3. IC 5-14-1.5-6.1, AS AMENDED BY P.L.101-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or
(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

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- (1) Where authorized by federal or state statute.
- (2) For discussion of strategy with respect to any of the following:
 - (A) Collective bargaining.
 - (B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.
 - (C) The implementation of security systems.
 - (D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

- (3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

- (4) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the Indiana finance authority, or ~~economic development commissions~~ **a governing body of a political subdivision**.

- (5) To receive information about and interview prospective employees.

- (6) With respect to any individual over whom the governing body has jurisdiction:

- (A) to receive information concerning the individual's alleged misconduct; and
- (B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:
 - (i) a physician; or
 - (ii) a school bus driver.

- (7) For discussion of records classified as confidential by state or federal statute.

- (8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

- (9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

- (10) When considering the appointment of a public official, to do the following:

- (A) Develop a list of prospective appointees.
- (B) Consider applications.

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(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1129 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 8, nays 1.

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